
(1991) 07 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 1809 of 1991

Zunshi Bhanu Yadav

APPELLANT

Vs

Tukaram Raghoo Chavan

RESPONDENT

Date of Decision : 15-07-1991

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 4, 4(1), 4(4)(a)

Citation : (1993) MhLj 859

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : V.A. Thorat with Bipin Joshi, for the Appellant; G.S. Hegde, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Agarwal, J.—The petitioner is the original defendant and the respondent is original plaintiff. For the sake of convenience, I will describe the parties with their nomenclature in the trial Court. The plaintiff filed in the Court of Small Causes R.A.D. Suit No. 4030 of 1986 for a declaration that he is tenant in respect of the suit premises. He prayed for a decree for possession. It is undisputed that the defendant has encroached upon Government land and has constructed a structure which includes the suit premises. It is the case of the plaintiff that he was in possession as a tenant and was forcibly dispossessed by the defendant. Hence he filed the aforesaid suit for declaration and possession. In the suit the plaintiff took out an injunction notice bearing No. 4844 of 1986. The defendant resisted the said notice on grounds inter alia that the suit premises are not governed by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to Rent Act) and hence the Court of Small Causes has no jurisdiction to entertain and try the suit. By a judgment and order dated 3rd April, 1990 the trial Court held that the Rent is not applicable to the suit premises and hence the Court of Small Causes has no jurisdiction to entertain and try the suit. Consequent upon the said findings, the plaint was ordered to be

returned for presentation to the proper Court.

2-3. Being aggrieved by the aforesaid judgment and order, the plaintiff preferred before the Appellate Court of Small Causes Appeal No. 284 of 1990. In the said appeal, the plaintiff took out interim notice bearing No. 3312 of 1990. By a judgment and order dated 13th February, 1991 the Appellate Court of the Small Causes held that the suit premises were governed by the Bombay Rent Act. It therefore directed the trial Court to decide the plaintiff's injunction notice No. 4844 of 1986 on its own merits. Being aggrieved by the aforesaid judgment and order, the defendant has preferred the present petition.

4. The short question that arises for my consideration is whether the: Bombay Rent Act applies to the suit premises i.e. a building which has been" constructed unauthorisedly on Government land. As stated earlier the defendant is a squatter and has constructed the instant structure on government land unauthorisedly and the issue on which the parties are at idem is whether the said premises are governed by the provisions of the Bombay Rent Act.

5. The relevant provisions for deciding the above question are section 4(1) and section 4(4)(a) and the same may be reproduced:

4(1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy (licence) or other like relationship created by a grant from (or a licence given by) the Government in respect of premises (requisitioned, or taken on lease or on licence) by the Government, including any premises taken on behalf of the Government on the basis of tenancy (or of licence or other like relationship by, of in the name of any officer subordinate to the Government authorised in this behalf;) but it shall apply in respect of (premises let, or given on licence, to) the Government or a local authority (or taken on behalf of the Government on such basis by, or in the name of, such officer)."

4(4)(a) The expression "premises belonging to the Government or a local authority" in sub-section (1) shall notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a Court, not include a building erected or any land held by any person from the Government or a local authority under an agreement, lease (licence) or other grant, although having regard to the provisions of such agreement, lease (licence) or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and"

6. It is to be noted that section 4(4)(a) was incorporated in the Rent Act by Bombay Act 4 of 1953. The same was necessitated on account of the judgment of the Supreme Court in the case of Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel, . In that case the Board of Trustees for the improvement of the City of Bombay, who were then the owners, had granted to one Sitaram Laxman a lease of 999 years with covenant for construction. The said Sitaram, in pursuance of the said covenant, constructed New Sitaram Building. By Bombay Act 16 of 1925

all the properties belonging to the Board of Trustees for the improvement of the City of Bombay vested in the Bombay Municipality. The leasehold rights in respect of the aforesaid New Sitaram Building was acquired by Bhatia Co-operative Housing Society Ltd. The said Society issued notice to a tenant D. C. Patel which let the society to file a suit in the City Civil Court and the question arose for consideration was whether the Rent Act was applicable to those premises. The matter was carried upto the Supreme Court which ultimately held that the Rent Act was not applicable as the building as also the land vested in the Local Authority. It appears that in order to overcome the hardship, which was likely to be visited upon the tenants on account of the aforesaid judgment, the present amendment was brought about by introducing section 4(4)(a).

7. Having noted the history in regard to the aforesaid amendment, I will now proceed to consider whether the present suit premises are governed by the provisions of the Rent Act. Section 4(1) carves out an exception in the matter of applicability of the Rent Act in respect of certain premises namely premises belonging to the Government or the Local Authority. To this general provision an exception is carved out in section 4(4)(a). That exception relates to premises which belong to the Government or Local Authority and which is held by any person from the Government or the local authority under an agreement of lease, licence or grant. The said exception applies both in cases where the building so erected, belongs or continue to belong to the lessee, licensee or grantee or to the Government or local authority. On proper construction of the aforesaid two sub-sections, it would appear that section 4(1) contains a general provision whereas section 4(4)(a) carves out an exception. The exception which is carved out in section 4(4)(a) is in respect of premises belonging to Government or local authority which is described in section 4(1). If the said premises qualify the test laid down u/s 4(4)(a) namely that the building is erected on the land held by any person from the Government or local authority under an agreement, the said exception would enure to the benefit of the tenant irrespective of whether the building so erected may belong to the Government. Local Authority or to the person who has constructed the same. Since sub-section 4(4)(a) carves out an exception, the same is liable to be given a narrow construction rather than an extended construction. In my view before the provisions of section 4(4)(a) can be made applicable the premises should satisfy a dual test. The land must be held from the Government or the Local Authority under a lease and the lessee under the terms of the lease should have constructed and put up the premises. It is only after these two requirements are satisfied that section 4(4)(a) can come into play and it would make no difference whether under the terms of the lease the structure vests in the lessee or the Government or Local Authority. In my view, the immunity which is sought to be granted by section 4(1) in the matter of applicability of the Rent Act is qua the premises and not the parties who have interest in it.

8. In the case of Ram Bhagwandas vs. Municipal Corporation of the City of Bombay, reported in AIR 1956 Bom. 564 the Division Bench of this Court,

presided over by Chagla, C. J. and Dixit, J. held as follows:-

?The proper interpretation to put upon section 4(4)(a) is that "under an agreement, lease or grant" must qualify both "building erected" and "land held". In other words, the building is erected by the lessee pursuant to the agreement, lease or grant given to the person who holds the land under the agreement, lease or grant. Therefore, where a building is erected by the lessee not pursuant to any agreement with the Municipality or not under any agreement with the Municipality, then the case does not fall u/s 4(4)(a).

What section 4(1) does is to give immunity to the local authority in respect of the land which it has let out to the lessee and that immunity cannot be taken away merely because the lessee on his own volition and without being under any obligation under any agreement chooses to put up structure on that land. A building "erected on any land held by a person from a local authority" is descriptive of the building. It does not emphasise the point of time when the building was erected. What is emphasised is that the nature of the building must be such as to satisfy the test that it is erected on a land held by a person from a local authority, and the test must be applied at the time when protection is sought."

9. The above ratio was approved by the Supreme Court in the case of Kanji Manji Vs. The Trustees of The Port of Bombay, . The above provisions came up for consideration by this Court in the case of Nagji Vallabhaji and Co. Vs. Meghji Vijpar and Co. and Others, . The said case pertained to a building which was constructed under a lease of land belonging to the Port Trust. On placing reliance on the aforesaid case reported in Ram Bhagwandas Vs. Municipal Corporation of the City of Bombay, . it was held that the proper interpretation to put upon section 4(4)(a) is the expression that "under an agreement, lease or grant" must qualify both "building erected" and "land held". In other words, the building is erected by the lessee pursuant to the agreement, lease or grant given to the person who holds the land under that agreement. It was pointed out that the use of the words "such agreement" and "so erected" clearly suggested that the building is erected under an agreement and pursuant to the agreement. Therefore, where a building is erected by the lessee, not pursuant to any agreement with the Municipality or not under any agreement with the Municipality, then the case does not fall u/s 4(4)(a). The protection attaches to the premises and the question must always be whether at the relevant date the protection given under the Rent Act attaches to the premises in question or otherwise. In other words, sub-section 4(a) of section 4 exempts buildings which are entitled to a particular qualification. That qualification was that the building must have been erected under an agreement, lease or grant and must have been erected on such land held by a person from the local authority or the Government as the case may be under an agreement, lease or grant. Therefore; there must be dual qualification with regard to the building. It must be on land held under an agreement and erected under the agreement. To such a building

where such qualification is attracted then even though the building is to belong to the Government or local authority that would not come in the way of the application of the Rent Act to such buildings. Therefore, to tenants and sub-tenants in such buildings, the Rent Act will apply. It follows that if the building does not qualify for such description the Rent Act will not apply.

10. The aforesaid decision was confirmed by the Supreme Court in the case of Nagji Vallabhji and Company Vs. Meghji Vijpar and Company and Another, . The question which arose for consideration was whether the protection of sub-section (4)(a) is available to the sub-lessee in a building leased by the lessee from the Government or a local authority or put up by a lessee of the land belonging to the Government or a local authority but not under any building lease or pursuant to any obligation imposed on the lessee to put up a building. It was observed-

?The plain reading of sub-section (I) of section 4 makes it clear that the provisions of the Bombay Rent Act are not applicable to premises belonging to the Government or a local authority. Sub-section (4)(a) only takes out from the scope of the exemption conferred by section 4(1) "a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be". If this provision were to be construed as including any building put up or erected on land held by any person from the Government or a local authority, the result would be that such protection would be available even against the Government or a local authority and the provisions of sub-section (1) of section 4 may be rendered largely nugatory. In fact, a plain reading of the provisions of sub section (4)(a) in the context clearly shows that there is no intention therein to take out a building put up by the Government or a local authority from the scope of the exemption conferred by sub-section (I) of section 4. In fact, the language of sub-section (4)(a) and sub-section (1) of section 4 of the Bombay Rent Act read together suggests that it was only in respect of a building put up by the lessee on the Government land or land belonging to a local authority under a building agreement that the sub-lessees were taken out of the exemption contained in sub-section (1) of section 4 and allowed the benefit of the provisions of the Bombay Rent Act. It is significant that the exemption granted under the earlier part of sub-section (1) of section 4 is in respect of the premises and not in respect of the relationship. In order to confer the protection of the provisions of the Bombay Rent Act to the sub-lessees occupying the premises in any building erected on Government land or on land belonging to a local authority irrespective of the question who has put up the building" as against the lessees of the land but without affecting the immunity conferred to the Government or local authority as contemplated by sub-section (1) of section 4 of the Bombay Rent Act, we would have practically re-written the provisions of section 4 and it is not open to us to do that."

11. The Supreme Court in the case of Maneklal and Sons Vs. Trustees of Port of Bombay and Others, dealing with the case of lease without building permission observed:-

"Therefore, if we have premises which belong to Government or a local authority, then the Act would not apply. The land here belongs to the local authority but the structures were put up by the lessees of the port not under any building lease, and such protection cannot be claimed in respect of these premises. Sub-section (4)(a) of section 4 is also relevant. The expression premises belonging to the Government or local authority in sub-section (1) shall notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a Court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease or other grant, although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be."

12. It is true that none of the aforesaid decisions deals with a case which has facts similar to the facts of the present case viz. where unauthorised construction is erected on Government land. In my view, the observations contained in the aforesaid Supreme Court cases, though may be obiter as far as the present case is concerned, are binding upon me. In view of the said decisions and also the observation contained in the other decisions of this Court which I have cited above I have no hesitation in holding that the suit premises are not governed by the Rent Act. The premises in the instant case are on Government land. The said premises however fail to qualify the dual test laid down in sub-section (4)(a). The land on which the premises stand are not held by the defendant under an agreement, lease or grant from the Government. Further the building in which the premises are situate is not erected by the defendant pursuant to the agreement lease or grant from the Government. Since the premises in question fails to satisfy either of the two tests I am inclined to hold that the suit premises in the present case is not governed by the Rent Act and consequently the Rent Court will have no jurisdiction to entertain the present suit.

13. For the foregoing reasons, I hold that the suit premises in the instant case are not governed by the Rent Act. The decision arrived at by the trial Court rejecting the Injunction Notice No. 4844 of 1986 and returning the plaint for presentation to the proper Court is liable to be affirmed. Consequently the contrary view taken by the Appellate Court is liable to be set aside.

14. Rule is made absolute.

There shall be no order as to costs.

Leave to appeal to the Supreme Court rejected.

Expedite issue of certified copy of this judgment and order.